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IN THE

Supreme Court of the United States

October Term, 1994

BABY "RICHARD," also known as BABY BOY JANIKOVA, a minor, by his guardian *ad litem*, Edward J. O'Connell, and

JOHN AND JANE DOE, Husband and Wife, Adoptive parents of Baby Richard,

Petitioners,

v.

OTAKAR KIRCHNER, Biological father of Baby Richard,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Illinois

BRIEF OF THE GOVERNOR OF THE STATE OF ILLINOIS AS *AMICUS CURIAE* IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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INTEREST OF AMICUS CURIAE

The Governor of the State of Illinois, Jim Edgar, respectfully submits this brief as *amicus curiae* in support of the petition for a writ of certiorari to the Supreme Court of Illinois.[1] *Amicus* is the chief executive officer of Illinois, and is charged with the responsibility to ensure the faithful execution of the laws and public policy of the State. A critical protection under Illinois law for infants born to unwed mothers has been eviscerated by the Illinois court decision in this case, based on a wholly erroneous

[1] A Petition for Writ of Certiorari was filed on August 8, 1994, in this case by the Guardian *Ad Litem* for the minor child referred to as Baby "Richard" (cited herein as "Petition" or "Pet."). A petition will also be filed by John and Jane Doe, the adoptive parents of Baby Richard. Pursuant to Rule 37.3, letters of consent by the parties to the filing of this brief have been lodged with the Clerk of the Court.

belief that such a result was compelled by the binding precedent of this Court. The Illinois court has gravely misinterpreted the dictates of the federal Constitution, and the decisions of this Court. This ruling erodes fundamental public interests, and poses devastating and irreparable consequences for the minor child, Richard, who is the subject of this case.

As this Court has previously recognized, it is of "vital importance" to the people of Illinois to "promote the best interests of the child, to protect the rights of interested third parties [to adoptions], and to ensure promptness and finality." *Lehr v. Robertson*, 463 U.S. 248, 266 & n.25 (1983). These interests are especially great when, as here, the case involves the adoption of a child of an unmarried mother who has given him up. Finding homes for these most vulnerable babies, and giving these infants the love, security, and support of a family of their own that all children deserve, is critical, especially in the face of soaring numbers of these children. Nationwide, over 1.2 million children are born to unmarried mothers each year — an increase of 82 percent since 1980. The number of children supported by the States in foster care has ballooned from 276,000 in 1986 to over 450,000 in 1992. More than 60,000 children are born in Illinois each year to unwed mothers; the number of children in State-supported foster care in Illinois now exceeds 40,000. At the same time, the failure of unwed fathers to assume parental responsibility has also reached crisis proportions: nationwide, paternity is established for only one-third of the births to unwed mothers.

These numbers have extraordinary societal consequences which fall upon the State to shoulder. When an unwed biological mother unequivocally and irrevocably rejects her newborn and refuses to identify its father, when no father steps forward to acknowledge his offspring, society no longer casts these abandoned infants upon Spartan mountaintops. Instead, the State actively urges fellow citizens to adopt them, and has crafted specific procedural protections, balancing the opportunities and burdens

imposed by this Court on unwed parents with the best interests of the child and the need to promote promptness and finality in adoptions. It is these State interests that are threatened by the Illinois decision here.

REASONS FOR GRANTING THE WRIT

The Illinois Supreme Court stated that it was bound by this Court's holding in *Stanley v. Illinois*, 405 U.S. 645 (1972), to conclude that the parental rights of respondent Otakar Kirchner were not properly terminated. This constitutes a basic misunderstanding of *Stanley*, and completely overlooks subsequent rulings by this Court that are contrary to the result here. This egregious error has led to the harsh injustice of commanding the delivery of a three-and-a-half year old child to a biological father he has never known. If permitted to stand, the court's decision will have tragic implications not only for Richard, but for all adopted children in Illinois. This decision casts an ominous shadow over the security of adoptive families, unnecessarily deters the future adoption of children in Illinois, and leaves the status of federal and state law governing adoptions in considerable doubt. Through its misinterpretation of an unwed father's legal interests, the Illinois court has upset the tender balance of rights explicit in Illinois adoption law and expressly approved of by this Court's precedent.

The Illinois statute specifies a 30-day time period in which an unwed biological father must demonstrate a "reasonable degree of interest, concern or responsibility as to the welfare of a new born child." (Pet. 2-3 (setting forth 750 ILCS 50/1(D)(1))). In the absence of that demonstration of concern, the potential legal interest of a biological father may be terminated. For biological fathers who intend to be fathers, this standard is effortless. For the children whose biological fathers do not, this 30-day bright line assures that they will not remain in an indefinite state of legal limbo. This is consistent with the precedent of this Court,

which clearly holds that an unwed biological father has no automatic, constitutionally protected right to a child he fathers merely because of biology. Instead, he bears an initial burden, and is entitled to parental rights only if he "grasps that opportunity and accepts some measure of responsibility for the child's future." *Lehr v. Robertson*, 463 U.S. at 262. States, like Illinois, may limit this "opportunity" through bright line rules and require unwed fathers to "adhere precisely" to these rules in order to promote the best interests of children and the certainty and finality of adoption. *Id.* at 265.

The Illinois decision, however, makes no mention of *Lehr*, and instead reaches the contrary and wholly erroneous result that creates "preemptive rights" for unwed fathers that cannot be limited. Instead of imposing a burden and responsibility on an unwed father to come forward to grasp his parental opportunity, the Illinois court improperly shifted the burden to adoptive parents and unwed mothers to provide this opportunity to unwed fathers. Instead of requiring unwed fathers to adhere precisely to the 30-day bright line rule, the Illinois court has given these fathers an open-ended opportunity, measured not by the date of the child's birth, but by when the father actually learns the opportunity exists. Instead of being "bound" by *Stanley* to reach this decision, the Illinois court was bound by this Court's precedent to strictly enforce the bright line rule and uphold the adoption of Baby Richard.

This bright line rule is essential to all who are touched by it. It provides an objective and immediate determination of parental interest, it protects the needs of infants, and it provides certainty and finality for prospective adoptive parents. Most importantly, it invokes *Lehr*'s careful balancing of the interests of all affected by it. For the majority of biological parents — mothers and fathers in the plainest sense of the words — this bright line is never an issue. But for biological mothers or fathers who declare an infant has died, who give that infant up for adoption,

who fail to come forward within 30 days of that infant's birth, this bright line, rather than biology, should control the infant's fate.

By eliminating the bright line rule in Illinois — which is similar to bright line rules adopted in other states — the Illinois decision sets the stage for a cruel and lengthy uncertainty for all parties to an adoption. The unwed father now holds the keys to his inchoate rights and the future of his children indefinitely. That is not the teaching of this Court, or the dictates of the Constitution. It is not the law of this land. It should not remain the law in Illinois. For these reasons, this Court should grant the petition for a writ of certiorari to review the decision of the Supreme Court of Illinois.

I.

THE ILLINOIS SUPREME COURT DECISION IS BASED ON A FUNDAMENTAL MISUNDERSTANDING OF THE DECISIONS OF THIS COURT

The initial opinion did not set forth the precedent relied on by the Illinois court for its decision that the unwed biological father's parental rights here were improperly terminated. (App.[2] 1-4). However, in denying a rehearing of that opinion, the court made clear that it viewed this case as governed by this Court's decision in *Stanley v. Illinois*, and that "[t]he courts of Illinois are bound by that decision." (App. 68). The court then misinterpreted *Stanley* as requiring that "unmarried fathers cannot be treated differently than unmarried mothers or married parents when determining their rights to the custody of their children." (App. 68). The court concluded that the termination of respondent's parental rights, under the bright line requirement of the Illinois Adoption Act that a reasonable degree of interest, concern, or responsibility be demonstrated during the first 30 days after a child's birth, was improper. Instead, the court gave

[2] The Appendix to the Petition is cited herein as "App."

unwed fathers "preemptive rights," including an open-ended "opportunity" to assert their parental rights. (App. 3-4). The court's ruling means that it is the burden of the mother and the adoptive parents to provide this opportunity to unwed fathers — not the responsibility of fathers to seize it — and this interest runs not from the day a child is born, but from the time the unwed father becomes aware the opportunity exists. (App. 2, 67).

Stanley, however, does not require such a result — indeed, the Illinois Supreme Court's opinion fundamentally misconstrues this Court's decision in *Stanley*. Moreover, the Illinois decision is completely at odds with the rulings of this Court since *Stanley* which make clear that for unwed fathers " '[p]arental rights do not spring full-blown from the biological connection.' " *Lehr*, 463 U.S. at 259 (quoting *Caban v. Mohammed*, 441 U.S. 380, 397 (1979) (Stewart, J., dissenting)). The "biological connection" provides an unwed father only with an opportunity of parenthood — an opportunity that he alone bears the burden to grasp and that the State may properly limit to "promote the best interests of the child." *Lehr*, 463 U.S. at 262, 266.

Over a decade ago, Justice Stevens warned of the cruel consequences that would result if unwed fathers were given rights that would "unquestionably complicate and delay the adoption process" for children born out of wedlock. *Caban*, 441 U.S. at 408-09 (Stevens, J., dissenting). The Illinois decision commits that very injustice, based on an entirely erroneous notion of the dictates of this Court.

A. The Illinois Ruling Misinterprets The *Stanley* Decision

In *Stanley*, the question before this Court was the constitutionality of an Illinois statute that presumed unwed fathers were unfit to raise their children. *Stanley v. Illinois*, 405 U.S. at 647. Stanley was an unwed father who had lived with his biological children and their mother, and who lost custody of his children when the State removed them from his home upon the death

of their mother. This Court held that the failure to provide Stanley with a hearing prior to the removal of his children violated Stanley's procedural due process rights. *Id.* at 649. Given that unmarried mothers and married parents could not be deprived of their children without such a hearing, this Court also concluded that the absence of a hearing for an unwed father violated the Equal Protection Clause. *Id.* at 658.

Contrary to the broad holding ascribed to *Stanley* in the Illinois decision here, *Stanley* does not require that unwed fathers must in all circumstances be treated the same as unwed mothers and married parents.[3] Rather, *Stanley* is limited to the circumstance in which the unwed father has demonstrated his parental interest and in fact has a substantial relationship with his children. *See Lehr*, 463 U.S. at 258 (explaining that "[t]he father in [*Stanley*] had lived with his children all their lives and had lived with their mother for 18 years"). Indeed, this Court has made clear that *Stanley* does not even apply in cases such as this one, based on the "clear and significant" differences between the "developed parent-child relationship" in *Stanley* and the inchoate relationship between this biological father and the child he has never seen. *Lehr*, 463 U.S. at 261. The Illinois Supreme Court's opinion that it was "bound" by *Stanley* to rule for the unwed father is simply wrong and should be reviewed by this Court.

B. The Decision Contravenes This Court's Precedent Following *Stanley*

1. This Court has made clear that the rights of unwed fathers can be limited

The Illinois decision not only is unsupported by *Stanley*, but is directly contrary to the precedent announced by this Court since *Stanley*. In a series of opinions specifically addressing the

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[3] The Illinois court specifically cites to page 658 of the *Stanley* opinion for support, but does not point to any specific language in the opinion.

rights of unwed fathers whose biological children have been adopted, this Court has made clear that for these fathers, biology alone is not enough to create constitutionally protected rights. Instead, these fathers bear the burden of coming forward to seize their rights, a burden that the States may strictly enforce. This is especially true where, as in this case, the countervailing interests of this three-year-old child, his adoptive parents, and the State are so substantial.

In *Quilloin v. Walcott*, 434 U.S. 246 (1978), the unwed father challenged a Georgia statute that did not give him a right to veto his child's adoption, although such a veto right was accorded married fathers. Instead, under Georgia law, the unwed father's interests were measured under the "best interests of the child" standard. *Id.* at 254. The unwed father had never attempted to establish a home with the child's mother, and in the 11 years since the child's birth had never initiated legal proceedings to legitimize his parental rights. *Id.* at 247, 249.

Contrary to the erroneous principle relied on by the Illinois court here, this Court in *Quilloin* unanimously held that Georgia could properly deny unwed fathers veto rights that were given to married fathers. This unwed father had "never shouldered any significant responsibility with respect to the daily supervision, education, protection or care of the child. . . . Under any standard of review, the State was not foreclosed from recognizing this difference in the extent of commitment to the welfare of the child." *Id.* at 256.

In *Caban v. Mohammed*, 441 U.S. 380, this Court addressed a New York statute that permitted an unwed mother, but not an unwed father, to block an adoption by withholding consent. The unmarried parents had lived together for five years, during which time they had two children who were openly acknowledged and raised as their children. *Id.* at 382. After the mother left with the children, the unwed father continued to visit

the children and attempted to obtain custody. *Id.* at 382-83. A divided Court held that where the father had a "substantial relationship" with his children, the gender-based distinction under the New York statute was invalid under the Equal Protection Clause. *Id.* at 392-93. The Court specifically noted, however, that its ruling did not extend to newborn adoptions, where the difficulties of identifying and locating biological fathers might justify "more stringent requirements concerning the acknowledgement of paternity or a stricter definition of abandonment." *Id.* at 392 n.11.

Indeed, the dissenters expressed grave concerns for the impact of a broad interpretation of *Caban* on the " 'compelling' " State interest in facilitating adoptions for "the thousands of children who are born out of wedlock every day." *Id.* at 402 (Stevens, J., dissenting). In particular, the dissenters warned of the delays and uncertainty that would be caused by expanding the rights of unwed fathers where the adoption of infants was at stake. *Id.* at 407-09. Thus, Justice Stewart explained:

> Parental rights do not spring full-blown from the biological connection between parent and child. They require relationships more enduring. The mother carries and bears the child, and in this sense her parental relationship is clear. The validity of the father's parental claims must be gauged by other measures.

Id. at 397 (Stewart, J., dissenting).

A majority of this Court agreed with this view in *Lehr v. Robertson*, 463 U.S. 248, the case raising issues most directly analogous to those presented here. In *Lehr*, the unwed father challenged the adoption of his child by the husband of the child's mother, which occurred without actual notice to the father or his participation in the adoption proceeding. *Id.* at 252-53. The father had not seen or supported the child in the two years since she was born, nor had he asserted his rights by registering in the State's putative father registry. *Id.* at 249-51. Under these circum-

stances, the New York adoption law limited the rights of some unwed fathers to object to an adoption, although such rights were preserved for all mothers. *Id.* at 266. The Court rejected the father's challenge, noting "the clear distinction between a mere biological relationship and an actual relationship of parental responsibility." *Id.* at 259-60. Contrary to the Illinois court's assertion of "preemptive rights" of "natural parents . . . to their own children" (App. 4), this Court explained in *Lehr* that "the mere existence of a biological link does not merit equivalent constitutional protection. The actions of judges neither create nor sever genetic bonds." *Lehr*, 463 U.S. at 261. Instead, the only factor that distinguishes the biological father is that he has:

> an opportunity that no other male possesses to develop a relationship with his offspring. If he grasps that opportunity and accepts some measure of responsibility for the child's future, he may enjoy the blessings of the parent-child relationship and make uniquely valuable contributions to the child's development. If he fails to do so, the Federal Constitution will not automatically compel a State to listen to his opinion of where the child's best interests lie.

Id. at 262.

Thus, the distinction drawn in the New York statute between unwed mothers and unwed fathers who failed to come forward to demonstrate a commitment did not violate the Equal Protection Clause. *Id.* at 266-67. Moreover, the Court found that the failure to provide the father with special notice of the adoption proceeding—even though the mother and the court knew he had filed his own paternity action—did not violate the Due Process Clause, as he could have received such notice if he had registered with the putative father registry. *Id.* at 264. The Court noted:

> The legitimate state interests in facilitating the adoption of young children and having the adoption proceeding completed expeditiously that underlie the entire statutory scheme also justify a trial judge's determination to require

> all interested parties to *adhere precisely* to the procedural requirements of the statute. The Constitution does not require either a trial judge or a litigant to give special notice to nonparties who are presumptively capable of asserting and protecting their own rights.

Id. at 265 (emphasis added).

Clearly, under *Lehr*, it is the unwed father's burden and responsibility to grasp his opportunity and demonstrate that he is committed to his child. When he fails to "adhere precisely" to the strict mandates of the law, his inchoate, unfulfilled parental role may be terminated.

2. The Illinois decision is based on the erroneous view that this Court does not permit limits on the rights of unwed fathers who fail to adhere strictly to the adoption statute

Contrary to this precedent, the Illinois Supreme Court here vitiates the plain requirement in the Illinois statute that an unwed father must come forward and grasp his opportunity under *Lehr* by "demonstrating a reasonable degree of interest, concern or responsibility as to the welfare of a newborn child during the first 30 days after its birth . . . ." Pet. 2-3 (setting forth 750 ILCS 50/1(D)(l)). Notwithstanding this mandatory bright line, the court, based on its erroneous interpretation of *Stanley*, held that this creates an impermissible distinction between unwed fathers and others, and that an unwed father may wait to demonstrate his interest until the day he "learned of his son's existence and of the pending adoption." (App. 67). The court set no limit on when this may occur; instead, the ruling effectively gives unwed fathers an open-ended right to claim their "opportunity."

This stems from the court's view that it must "protect natural parents in their preemptive rights to their own children." (App. 4). However, this Court has made clear that, especially in the case of unwed fathers, no such "preemptive rights" exist un-

der the Constitution based on biology alone. Rather, unwed fathers bear the burden of coming forward to acknowledge their children.

The ruling by the state court relieves unwed fathers of this burden and instead places the burden on the child, adoptive parents, and the unwed mother to provide the unwed father with his "opportunity to discharge any familial duty." (App. 3).[4] Such a shift plainly contravenes the precedent of this Court.[5] The actions by the mother and adoptive parents here, cited in harsh terms by the court, do not relieve the unwed father of *his* obligations under *Lehr*—indeed, in *Lehr* itself, the father asserted that he was never "afforded an opportunity to present his case" due to the actions of the mother and even the trial court, both of whom knew his identity and whereabouts. *Lehr*, 463 U.S. at 270-72 (White, J., dissenting).

The Illinois decision is based on an erroneous view of the mandates of this Court—mandates that have struck a careful

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[4] This point is made in both opinions by the Illinois court. In the first opinion, the Illinois Supreme Court assigns partial fault to the adoptive parents and their attorney, as they "proceeded with the adoption when they knew that a real father was out there who had been denied knowledge of his baby's existence." (App. 3). The Court imposed a "good faith" requirement of looking for the biological father. (*Id.* at 2-3). The second opinion reiterates this "good faith" requirement which the court interprets as meaning actual notice required by "due process of law." (App. 69). According to the Illinois court, adoptive parents who fail to provide such notice "proceed[ ] at their peril." (*Id.*).

[5] This shift in burden is especially unjustified here where it was undisputed in the courts below that the unwed father knew well in advance of the 30-day limit that the child had been conceived, that he was the father, and even the specific due date of the child's birth. (App. 31). However, the unwed father took no advantage of his opportunities to assert his parental rights, including, for example, marrying the child's mother or initiating paternity proceedings prior to the child's birth. (App. 32, 34). Contrary to the ruling by the Illinois court, this Court has held that the Constitution does *not* require special treatment for unwed fathers "who are presumptively capable of asserting and protecting their own rights." *Lehr*, 463 U.S. at 265.

balancing of the competing interests in traumatic situations such as this. Upsetting this balance, as the Illinois court has done, will have tragic, irreparable consequences. Thus, it is essential for this Court to hear this case to address these errors and restore the necessary balance in this most sensitive area of the law.

II.

THE DECISION IN THIS CASE EVISCERATES THE BRIGHT LINE RULE IN ILLINOIS WHICH WAS ENACTED CONSISTENT WITH THIS COURT'S PRECEDENT AND SIMILAR STATUTES IN OTHER STATES FOR THE PURPOSE OF PROVIDING HOMES AND SECURITY FOR THOUSANDS OF BABIES BORN OUT OF WEDLOCK

Rather than requiring this unwed father to "adhere precisely to the procedural requirements of the statute" (*Lehr*, 463 U.S. at 265), the Illinois court has eliminated the strict 30-day bright line in the Illinois Adoption Act in favor of an unwed father who did not come forward until nearly two months after his baby was born. This bright line exists because of the critical need to quickly ascertain whether newborn babies born to unmarried mothers will have a home, or whether one can be provided through adoption. Certainty and finality in this most important decision is essential for the best interests of the individual children involved, such as Richard, and for the State to meet the needs of the burgeoning number of children being born out of wedlock. As this Court recognized in *Lehr*, there is a "legitimate state interest in facilitating the adoption of young children and having the adoption proceeding completed expeditiously . . . ." *Lehr*, 463 U.S. at 265.

For these reasons, Illinois and other states throughout the country have enacted these bright line limits to define the parental "opportunity" that must be grasped under *Lehr*. Without the

clarity demanded by the bright line statutes, the next infant's unwed father could come forward six months later, a year later, two years later. This result casts a chill over the entire adoption process and is directly contrary to the public policy of encouraging adoption. Unless the decision here is addressed by this Court, a frightening uncertainty will be cast over thousands of adoptions not only in Illinois, but elsewhere in this country. Such a result cannot stand, especially in the face of the societal problems already confronting children and families in our nation.

A. The 30-Day Bright Line Rule Must Be Strictly Enforced To Protect All Parties To An Adoption And To Promote The Adoptive Placement Of Children In Need Of Homes

This Court has recognized the "vital importance" of providing homes for children born out of wedlock. *Lehr*, 463 U.S. at 266 n.25 ("It has long been accepted that illegitimate children whose parents never marry are 'at risk' economically, medically, emotionally, and educationally."); *see also Caban*, 441 U.S. at 395 (Stewart, J., dissenting). Clearly there is a compelling public interest in ensuring that infants born to unwed mothers nonetheless have some immediate certainty as to a parental commitment to their care and well-being. Similarly, there is a strong interest in encouraging adoptive parents to provide loving, permanent homes for these children when that parental commitment is not demonstrated. There is also an interest in ensuring that custodial parents (most typically the mothers of these infants) are able to make decisions as to the welfare of their babies, including consenting to adoption, without fear that an absent unwed father will later appear and undo their decision.

These interests are balanced against the "opportunity" interests under *Lehr* of putative fathers, who have neither married the mothers of these newborns, legally asserted their paternity rights, nor established a substantial relationship with the child. Under the Illinois statute, this balancing properly resulted in the mandatory bright line rule that gave unwed fathers 30 days

within which to demonstrate "a reasonable degree" of interest or responsibility, but thereafter allowed for an irrevocable termination of the parental rights of any unwed father who did not meet the statutory time limit. (Pet. 2-3 (setting forth 750 ILCS 50/1(D)(1))). This Court has specifically endorsed such balancing legislation designed to "promote the best interests of the child, to protect the rights of interested third parties, and to ensure promptness and finality." *Lehr*, 463 U.S. at 266.

However, the Illinois Supreme Court, relying on *Stanley*, considered solely the interests of the unwed father, and in doing so eviscerated the certainty and clarity demanded by the bright line rule. The court set no time limits when an unwed father may come forward. This sets the stage for a cruel and lengthy uncertainty for all parties to an adoption. As delays grow and the boundaries are judicially stretched, the innocent child will suffer the hapless fate of either losing the opportunity to bond at his or her best opportunity, or worse yet, as in the case of Richard, to develop deep bonds only to have them later judicially destroyed. Adoptive parents, who should be able to feel secure in the family bonds they create—which themselves may be constitutionally protected—may nonetheless have those bonds traumatically severed. *See Smith v. Organization of Foster Families for Equality & Reform*, 431 U.S. 816, 844 n.51 (1977) (adoptive parenthood under Constitution may be recognized as legal equivalent of natural parenthood).[6] Unwed mothers, who naturally bear the immediate burden of either caring for a child or giving the child up, will be unable to make such difficult choices with any certainty or comfort. The Illinois decision plainly will result in the consequences warned of by Justice Stevens:

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[6] This intervention is particularly egregious as adoptive parents have made and demonstrated a commitment to have a child and accept the responsibilities of parenthood. As "the rights of the parents are a counterpart of the responsibilities they have assumed," *Lehr*, 463 U.S. at 257, adoptive parents should enjoy preference over biological parents who have not assumed this responsibility.

> [S]uch a rule would remove the mother's freedom of choice in her own and the child's behalf without also relieving her of the unshakable responsibility for the care of the child. Furthermore, questions relating to the adequacy of notice to absent fathers could invade the mother's privacy, cause the adopting parents to doubt the reliability of the new relationship, and add to the expense and time required to conclude what is now usually a simple and certain process.

Caban, 441 U.S. at 408-09 (Stevens, J., dissenting).

The strict time frames of the Illinois Adoption Act are a valid and necessary response to the startling growth in births to unmarried women. The number of births out of wedlock has grown at a near exponential rate over the last thirty years, from five percent of all births nationwide to nearly 30 percent, and based on its current trajectory will reach 50 percent by 2003.[7] The number of births to unmarried mothers in 1991 totaled 1.21 million, an 82 percent increase since 1980.[8] Yet, paternity is established for only approximately one-third of the annual births to unmarried women.[9] The number of children in the foster care system nationwide has also ballooned, from 276,000 in 1986 to over 450,000 in 1992, according to the National Council for Adoption and the American Public Welfare Association.[10] Sadly, as the number of children who stand to gain the most from adoption has skyrocketed, the number of children adopted each year

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[7] Dep't of Health and Human Servs., Admin. for Children and Families, Office of Child Support Servs., *Seventeenth Annual Report to Congress* 3 (1992); David S. Broder, *Illegitimacy: An Unprecedented Catastrophe*, Wash. Post, June 22, 1994, at A21; *see also* U.S. Bureau of the Census, *Statistical Abstract of the United States* 78 (113th ed. 1993). This has grown to nearly double the rate cited by the dissent in *Caban*. *See* 441 U.S. at 402 n.2 (Stevens, J., dissenting).

[8] Dep't of Health and Human Servs., Admin. for Children and Families, Office of Child Support Servs., *Seventeenth Annual Report to Congress* 3 (1992).

[9] *Id.* at 11.

[10] Thomas McArdle, *Exploring the Adoption Option*, Investor's Business Daily, Aug. 4, 1994, at 1.

has receded. Adoption in America has been precipitously falling over the last two decades, from 90,000 unrelated domestic adoptions in 1970 to less than 53,000 a year today, according to the National Council for Adoption.[11]

In response to this exigency, the goal of Illinois is not simply to encourage adoption itself, but to require rapid and permanent placement as early as possible in the child's life. Studies have shown that expeditious placement benefits the child, the natural parents, the prospective adoptive parents, and society as a whole.[12]

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[11] *Id.*

[12] Fostering permanent adoptions and prompt determination of parental interest as early as possible in a child's life is of paramount importance, not just as a matter of broad social policy, but also as a scientifically recognized means of safeguarding the development of the child. The Search Institute, a federally funded nonprofit child research group, recently released a four year study of adopted adolescents and their families, the largest such study ever conducted in the United States. In "Growing Up Adopted: A Portrait of Adolescents and Their Families," the Institute cites early placement as a key to successful adoption and well-adjusted adoptees, for a child who joins a family as an infant is able to form a secure attachment with parents, an attachment which serves as a foundation for adolescent self-esteem. *Thriving Kids: Exploding Unhappy Myths About Adoption*, Star Trib., July 1, 1994 at 16A; Laura Sessions Stepp, *Adoption and Well-Being*, Wash. Post, June 24, 1994, at B5.

Furthermore, as early placement is a necessary precursor to positive adoption outcomes, early stress in a child's life has a reciprocally negative effect. A three-year study recently released by the Carnegie Corporation on young American children concludes that children's environment from birth to age 3 helps determine their brain structure and ability to learn. Susan Chira, *Study Confirms Some Fears on U.S. Children*, N.Y. Times, April 12, 1994, at A1. The report, titled "Starting Points: Meeting the Needs of Our Youngest Children," found, among other things, that a child's early experiences can have a marked effect on his or her brain cell development. Early stress activates hormones that can forestall learning and memory, and lead to a higher risk of intellectual and behavior problems in young children. Conversely, early stimulation of the infant brain can improve the child's later brain structure. Thus, the Search Institute and Carnegie reports both corroborate and underscore the importance of Illinois' public policy fostering not only *early* but also *permanent* placement for children such as Richard.

However, it is now unclear whether an adoption can ever be truly final in this state when a biological mother either does not know the father's name or refuses to reveal it. Under the Illinois Supreme Court's ruling, a putative father will be able to argue that he should be entitled to exercise his "opportunity interest."

B. The Illinois Bright Line Rule Eroded By The Decision Here Is Consistent With Similar Statutes In Other States

Illinois is not alone in addressing these major societal concerns through the enactment of bright line rules to protect newborn babies.[13]

These state statutes, like the Illinois Adoption Act, implement the constitutional guidelines set out by this Court in *Stanley* and its progeny by establishing statutory windows within which an unwed father must grasp his opportunity to become a parent, an opportunity which clearly is "limited in duration." *Robert O. v. Russell K.*, 604 N.E.2d 99, 103 (N.Y. 1992) (relying on *Lehr* and cases interpreting it and holding that "the period in which the biological father must manifest his parental interest is limited in duration: if the father's actions are untimely, the State can deny a right of consent").

Consistent with the rulings of this Court, these states have demanded strict adherence by unwed fathers to statutory limits

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[13] *See, e.g.*, Neb. Rev. Stat. § 43-104.02 (1993) (unwed father not recognized unless he files notice within five days after the birth of his child); Cal. Fam. Code § 7631 (1994) (unwed father must bring action to assert status in adoption proceeding within 30 days after receiving notice or after the birth of the child); N.M. Stat. Ann. § 32A-5-19 (1994) (consent to adoption or relinquishment of parental rights not required from putative father who has failed to register with putative father registry within 90 days of the child's birth); Minn. Stat. § 259.261 (Supp. 1993) (unwed persons shall lose parental rights and not be entitled to notice unless within 90 days of the child's birth or within 60 days of the child's placement with prospective adoptive parents, whichever is sooner, that person files affidavit to retain parental rights).

on this opportunity. *See, e.g., Shoecraft v. Catholic Social Servs. Bureau, Inc.*, 385 N.W.2d 448, 451 (Neb. 1986) (citing *Quilloin* and *Caban*, and upholding Nebraska's statute requiring an unwed father to declare his status within *5 days* after the birth of the child; finding that father lost his rights after missing the deadline by 4 days); *Sanchez v. L.D.S. Social Servs.*, 680 P.2d 753, 755 (Utah 1984) (although putative father had registered in putative father registry one day after adoption, court held adoption statute must be strictly construed to promote the state's interest in protecting the child: "[b]ecause of the nature of subject matter dealt with by the statute, a firm cutoff date is reasonable, if not essential"). As one court has noted, the goal of "prompt finality" is "paramount" under *Lehr*, because "[o]therwise a young child languishes in limbo — surrendered by the mother, unclaimed by the father, and bonding with others — from which the law cannot extricate the child without lengthy proceedings compounding the harm." *In re Pima County Juvenile Severance Action No. S-114487*, 1994 Ariz. LEXIS 68, *26 (1994).

Moreover, relying on *Lehr*, states have held that the burden imposed by this Court on unwed fathers is not relieved where the mother knows the father's identity but refuses to reveal it, or even where she and the adoptive parent falsely swear that the father is unknown. *See, e.g., Evans v. South Carolina Dep't of Social Servs.*, 399 S.E.2d 156, 158 (S.C. 1990) ("where a father's consent is not needed for an adoption due to the father's lack of accepting any of the responsibilities of fatherhood . . . the father's due process rights are not violated by publishing a 'John Doe' notice when the identity of the father is unknown because the mother refuses to reveal it"); *In re Adoption of Reeves*, 831 S.W.2d 607, 608-09 (Ark. 1992) (adoption by the mother's husband upheld where unwed father failed to timely file with putative father registry, even though mother and her husband falsely swore that the father was unknown).

The importance of strictly enforcing these bright lines was explained by the New York Court of Appeals in *Robert O. v. Russell K.*, 604 N.E.2d at 103-04:

> To conclude that [the unwed biological father] acted promptly once he became aware of the child is to fundamentally misconstrue whose timetable is relevant. Promptness is measured in terms of the baby's life not by the onset of the father's awareness. The demand for prompt action by the father at the child's birth is neither arbitrary nor punitive, but instead a logical and necessary outgrowth of the State's legitimate interest in the child's need for early permanence and stability.

These legitimate state interests, which correctly follow this Court's guiding precedent, have been ignored by the Illinois Supreme Court, based on an erroneous view of this Court's rulings. Clarification from this Court is clearly needed in this matter, especially where the human cost of a wrongly-decided opinion is so great.

CONCLUSION

For the foregoing reasons, *amicus* respectfully requests that this Court grant the petition for a writ of certiorari in this case.

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